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HUMAN RIGHTS COMMITTEE

Forty-sixth session

SUMMARY RECORD OF THE 1179th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 20 October 1992, at 10 a.m.

Chairman: Mr. POCAR

later: Mr. AGUILAR URBINA

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GE.92-18016 (E)

The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Senegal (CCPR/C/64/Add.5)

1. At the invitation of the Chairman, Mr. Fofana and Mr. Dia (Senegal) took places at the Committee table.

2. Mr. FOFANA (Senegal), introducing the third periodic report of Senegal (CCPR/C/64/Add.5), said that his country was convinced that human rights would be a predominant issue throughout the coming century. Having learned from experience of two world wars in the first half of the twentieth century that armed confrontation could never provide a basis for international relations, mankind had organized itself into an international community and decided to make human rights its instrument for the restoration and maintenance of world peace and security. Following the adoption of the Universal Declaration of Human Rights, the international community had gone on to adopt the two International Covenants and the Optional Protocol as well as later instruments dealing with discrimination in all its forms and covering in particular the specific rights of women and children. All those instruments had been a major source of inspiration to Senegal on its accession to international sovereignty, when it had resolved to make the primacy of the law the foundation of the State. The first Constitution had been adopted in 1960 as the sole legal framework for determining relations between the public authorities and individuals, on the one hand, and between the Senegalese State and other institutions on the other. To that legal framework had been added three public institutions: an executive power responsible for establishing national and international policy; a legislative power to be the depositary of national sovereignty; and an independent judicial power responsible for determining the law. The primacy of the law was also respected in the field of promotion and protection of human rights. Human rights were not merely referred to in the preamble to the Constitution but were defined systematically in articles 6-20 and could be evoked and defended before all appropriate bodies.

3. To better guarantee such primacy of the law in practice, the public authorities had established an independent judiciary, consisting of a Higher Council of the Judiciary and a Supreme Court. From 30 May 1992, it had also comprised a Constitutional Council, a Council of State, a Court of Cassation and other courts and tribunals. The Mediator of the Republic, established under Act 91-14 of 11 February 1991, was also concerned to ensure that the public authorities were subject to the law. The first report of the new institution had been well received both by the administration, whose attention had been drawn to cases of non-recognition or violation of human rights, and by the general public, from whom more than 3,000 requests for assistance had been received.

4. Senegal's respect for the primacy of the law had led to the preparation of a large body of legislation designed to ensure that all matters affecting individuals were subject to legislative provisions and that human rights were

promoted and protected. That had led to the establishment in 1970 of a Senegalese Human Rights Committee to plan and coordinate Government policy and disseminate information on human rights. The Committee had been reorganized in 1978 and 1990 to adapt it to the national and international situation with respect to protection and promotion of human rights. The public authorities had encouraged the establishment of competent non-governmental organizations, about 10 of which had been formed and enjoyed the support of the people and Government.

5. The International Covenant on Civil and Political Rights contained provisions that were binding on States parties. The importance of the right to self-determination had been recognized in article 1 of the two International Covenants on Human Rights. Senegal had defended that right by playing an important role in the wars of liberation of colonial peoples and defending the right to self-determination of the South African, Namibian, Western Saharan, Palestinian and Kuwaiti peoples. Among the many and varied rights of the individual covered in detail in the Covenant, the rights to life, physical integrity and security of person were fundamental. The Government supported the principle that no one should be deprived of life by law, and there had been only two cases of capital punishment in Senegal throughout its existence. The death penalty still theoretically existed but had been effectively abolished in practice. The use of firearms by the forces of law and order was closely regulated by Act 70-37 of 13 October 1970 and Act 74-13 of 24 June 1971 amending article 92 of the Penal Code with respect to the maintenance or restoration of public order. Violation of those texts by such forces carried disciplinary and penal sanctions.

6. Physical integrity was specially protected in Senegal. Torture or other cruel, inhuman or degrading treatment or punishment committed by members of the forces of law and order were subject to severe penalties, as illustrated in the report. The Code of Penal Procedure had been amended in 1985 to strengthen measures to promote individual freedoms. Decisions of the judicial police and of examining magistrates in that area were strictly supervised. Officials who ordered remand in custody and failed to respect their obligations could be disowned and be subject to civil or penal proceedings. The detention process could be monitored by the defence counsel.

7. The powers of the examining magistrate to issue a detention order were limited by article 127 bis of the text, taking account of the applicable penalty and the place of residence of the accused person, whether within or outside the area of jurisdiction of the court. For example, if the person concerned could incur a penalty of up to two years and lived within the jurisdiction of the court, he could not be placed in detention, but if he lived outside that area he could be detained for a period not exceeding five days, and if the case was not taken up within that period he would be released. The examining magistrate then had six months in which to apply for renewal of the case, failing which the head of the penal establishment must release the accused person without reference to the judge.

8. Lastly, there was judicial control in the Code of Penal Procedure, which again proved that detention was the exception and freedom the rule. The right

of a person to live where he chose, to leave his place of residence at any time and to return unimpeded was also guaranteed by the Constitution and the law.

9. There were four aspects to the constitutional right to equality before the law in Senegal: the restrictive notion of the equality before the law of all citizens without distinction as to origin, race, sex or religion (art. 4); the very broad concept of equality of all human beings before the law (art. 7 (1)); the special equality between men and women before the law (art. 7 (2)); and equality excluding any privilege based on birth or family (art. 7 (4)). A further right was that of non-discriminatory treatment of the individual. Discrimination and distinction or exclusion had been viewed as a real threat to the nation because of its colonial past and had been condemned and made punishable from the time of the first Constitution. Following its accession to the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Suppression and Punishment of the Crime of Apartheid, the public authorities had issued Act 81-77 of 1 December 1991 providing heavy penalties for those responsible for any acts of discrimination.

10. The basic human right to bring any case involving a violated right before any court was also guaranteed. Since many citizens lacked the means to do so, provision had been made for legal assistance. Under an Act based on the former colonial law, such assistance was provided free to anyone who could not afford it.

11. The principle of presumption of innocence was enshrined in the Constitution, but was difficult to apply in practice because of the connection between charge and culpability. The authorities were considering the possibility of amending the Penal Code as appropriate.

12. The right to a defence was also recognized by the Constitution and there, too, legal assistance could be provided. Application could be made for a case to be reviewed by a higher court. That right had not been open to persons in respect of the State Security Court but that Court had been abolished by Act 92-31 of 4 June 1992 on the ground that it had impeded the democratic processes of the State.

13. The right to trial within a reasonable period was also guaranteed. The public authorities had liberalized the use of the procedure governing flagrante delicto and had limited the number of referrals to other courts. The right to be informed of the grounds for a charge was also guaranteed, as was the right to be given the necessary time in which to prepare a defence (arts. 101 and 385 of the Code of Penal Procedure). The same applied to the right to call and interrogate witnesses and the right of a person not to testify against himself. Provision was made for special treatment for juveniles, for whom a wide range of protection measures was provided. The right to compensation in cases of arbitrary or illegal detention was not recognized in Senegalese legislation. The extinction of public proceedings once the res judicata stage had been reached was another important safeguard for the individual. The legality of offences and penalties was provided for by article 6 of the Constitution. The right to legal personality and its protection was also

covered by the Constitution (art. 6 (3)). The Family Code determined the constituent elements of such legal personality and the measures for their protection. The right to privacy, covering the inviolability of the home and the confidentiality of correspondence, was protected by law. Freedom of conscience and religion were guaranteed, as shown by the harmonious coexistence of the various revealed religions and by the recent visit of a religious leader to a country in which 90 per cent of the population was Muslim. Freedom of expression was also guaranteed, as demonstrated by the large number of political parties and press organs, as was the right to freedom of association; peaceful meetings could be held whenever desired. Incitement to hatred or war was not permitted. A recently established Radio and Television Council guaranteed freedom of expression through the media.

14. The right of all citizens to participate in public affairs, to vote and to be elected by universal suffrage and secret ballot allowed for the free expression of the will of electors and equal opportunities to accede to public office. The recent reform of the Electoral Code to provide for free, open and incontestable elections and to limit the presidential mandate to a single renewable term showed how those rights were guaranteed. Every citizen had the right to run for the office of President of the Republic without the backing of any political party. That was a major innovation. The Supreme Council for Radio and Television played a leading role in the presidential electoral procedure and in allowing the use of the media by parties and candidates.

15. Economic, social and cultural rights were also of concern to the public authorities. Trade union freedom was guaranteed under the Constitution and the Labour Code, which permitted all persons to form trade unions and take part in their activities. About 10 such unions existed in Senegal. The family was recognized as constituting the natural basis for all human communication. A Family Code regulated all aspects of the family, protected the freedom of marriage and divorce and free consent to the marriage and placed the child at the centre of protection. Other texts, such as the Penal Code and the Code of Penal Procedure, also contained important provisions for the protection of children. A Ministry with sole responsibility for the rights of women, children and the family had been established in 1991. Senegal had ratified the Convention on the Rights of the Child in November 1991.

16. At the international level, the primacy of the law, particularly in the human rights field, was viewed by Senegal as the basis for foreign policy, with the further objectives of the fulfilment of the right of peoples to self-determination and the realization of African unity. It had acceded to 26 international human rights instruments which, under article 79 of the Constitution, had primacy over national laws, and which had been integrated into its legislation and could be invoked before all Senegalese courts.

17. On its accession to international sovereignty, the Republic of Senegal had rapidly become aware of the danger of division of the African continent into mini-States having no chance of survival. In drawing up the first Constitution, therefore, the public authorities had resolved, in the preamble, that they would spare no effort to secure African unity. Over three decades, all efforts of Senegalese diplomacy had been centred on such unity, with the OAU as the

regional structure and with a number of subregional organizations, further reinforced by the appointment of a Minister for African Integration.

18. It could thus be seen that the promotion and protection of human rights and the rights of peoples was a tangible reality forming part of the daily life of the Senegalese people. His delegation would take note of all comments and questions that might be raised and would remain at the Committee's disposal.

19. The CHAIRMAN invited the delegation of Senegal to reply to the questions in section I of the list of issues, which read:

"I. Constitutional and legal framework within which the Covenant is implemented, self-determination, non-discrimination, equality of the sexes, protection of the family and rights of persons belonging to minorities (arts. 1, 2, 3, 23, 24, 26, and 27)

(a) Please clarify whether the Optional Protocol has been published in the Journal Officiel.

(b) Can an individual invoke the provisions of the Covenant before the Senegalese authorities, especially the courts?

(c) Please comment further on the functions and activities of the Senegalese Human Rights Committee, mentioned in paragraph 77 of the report.

(d) What measures have been taken to publicize the Covenant and the Optional Protocol and create public awareness about the rights contained therein?

(e) Please clarify whether the Constitution has been amended to include all the grounds of discrimination covered in the Covenant, as announced during the consideration of the second periodic report.

(f) With reference to paragraph 13 of the report please clarify whether specific legislative, administrative and judicial arrangements have been made by the Government of Senegal to prevent racial discrimination.

(g) What is the meaning of the sentence in paragraph 106 of the report that "with such a repressive body of laws, the questions of distinctions in general and minorities in particular can neither coexist with Senegalese law nor develop in such an atmosphere"?

(h) Please clarify the compatibility with the Covenant of articles 152 to 154 of the Family Code, which grant special rights to men, and whether, as announced during the consideration of the second periodic report, a commission has been set up to study family law matters.

(i) Please clarify what powers are vested in the President of the Republic in the face of certain serious and imminent dangers to the

mation, under article 47 of the Constitution, and what rights can be suspended in such a situation? (See para. 30 of the report.)"

20. Mr. FOFANA (Senegal), referring to question (a), said that the Optional Protocol had been published in the Journal Officiel in 1978, following its ratification in 1977 by Act 77-73.

21. On question (b), anyone standing trial in Senegal could invoke the provisions of the Covenant before the authorities. Once ratified, an international instrument became part of Senegalese legislation.

22. In reply to question (c), the Senegalese Human Rights Committee had been established in 1970 as a demonstration of Senegal's commitment to United Nations ideals. It was responsible for considering all general questions concerning the protection and promotion of human rights and for proposing appropriate measures in that field to the public authorities. It was also required to coordinate the activities of non-governmental organizations in the promotion and protection of human rights; to prepare and ensure the implementation of a programme of human rights activities; to collate international human rights documentation in cooperation with non-governmental organizations; to liaise with the relevant United Nations bodies and non-governmental organizations in other countries; and to disseminate the Universal Declaration of Human Rights and other relevant instruments. The Committee acted as an intermediary between the public authorities and the non-governmental organizations, which were required to transmit any relevant studies to it for information.

23. On question (d), ever since Senegal had ratified the Covenant and the Optional Protocol, those instruments had been a focus of the activities of its Human Rights Committee, which broadcast a weekly radio programme on the subject. Non-governmental human rights organizations also helped to disseminate information in lectures and discussions. The Constitution, which contained all the relevant provisions of those instruments, was publicized in schools and universities with the assistance of the Senegalese Human Rights Committee.

24. With respect to question (e), the Constitution had not been amended to include all the grounds of discrimination covered in the Covenant, but that omission was remedied by Act 81-77 of 1981, whereby all cases of discrimination were punishable by imprisonment.

25. On question (f), the specific measures taken to prevent racial discrimination had included the establishment of the Université des mutants ("Career-changers' University"), since it was through such institutions that fraternal links could be created between peoples. The Human Rights University in Dakar provided courses on human rights and on the elimination of discrimination. Ministers of religion in mosques, temples and churches preached tolerance and brotherhood, and State radio and television were also used to propagate such principles.

26. The phrase quoted in paragraph (g) of the list of issues from paragraph 106 of the report meant that the penalties provided by law constituted a sufficient deterrent against any form of distinction.

27. Concerning question (h), article 152 of the Family Code established the husband as head of the family; that was simply a function he was called on to perform in the interests of the family as a whole, and especially of his wife and children. Article 153 provided that the husband should determine the residence of the household. That, again, was merely the function he was required to perform. If, however, the wife believed that her husband's choice of residence posed a danger to the health or morals of the family, she was entitled to apply to the departmental judge to accord her separate residence. That article could not, therefore, be regarded as discriminatory. It should also be noted that article 13 (1) of the Family Code had earlier fixed the legal domicile of the wife as that of the husband, enabling the latter to take action against his wife in the event of her desertion of the matrimonial home. That offence had been replaced in the Penal Code by provisions concerning desertion of the family (art. 332) which were equally applicable to both spouses. Act 89-01 of January 1989 had subsequently deleted article 13 (1) from the Family Code and had also abrogated article 154.

28. With regard to question (i), concerning the special powers vested in the President of the Republic, article 47 of the Constitution had been reproduced from article 16 of the French Constitution with the aim of enabling the Head of State to take measures in the face of certain serious and imminent dangers to the nation. Those measures, unfortunately, were not defined by the Constitution or by any special laws, but the article in question had never actually been applied in Senegal. Moreover, it had been realized that article 58 of the Constitution provided adequate means to regulate states of emergency. He was sure, however, that had the provisions of article 47 been invoked, that would have been done only in very grave situations and would not have endangered human rights.

29. Mr. LALLAH commended the State party on its excellent report and its major efforts in the field of human rights. He had only two comments to make, the first of which related to the issue of equality between men and women, and in particular to the provisions of articles 152-154 of the Family Code. The approach of the representative of the State party on that subject differed strikingly from that taken by the delegation which had spoken during the consideration of the second periodic report of Senegal, when Mr. Ndiaye had, moreover, made a long statement arguing that both polygamy and absence of discrimination between men and women were a natural part of African society. It had been suggested on that earlier occasion that articles 152-154 of the Family Code should be reviewed in the light of article 3 of the Covenant. He was pleased to note that article 154 of the Code had since been deleted. He would, however, like to know whether polygamy still existed and, if so, how it could be reconciled with the provisions of the Covenant.

30. His second point concerned paragraph 27 of the report, which referred to the disturbances in 1988 and 1989, when states of emergency had been proclaimed. He wondered whether the Government of Senegal had taken due note of the provisions of article 4 (2) of the Covenant - a point that was particularly important in view of the State party's obligations under article 41. While he welcomed the clarification just made concerning the powers vested in the President of the Republic under article 47 of the Constitution, he wished to

point out that the provisions of article 4 of the Covenant were very strict. Even if the powers in question had never been exercised, they existed in the letter of the Constitution. Might it not be possible to enact legislation limiting the derogations provided for under article 47 of the Constitution so as to ensure conformity with the Covenant?

31. Mr. EL SHAFEI joined in welcoming the representative of the State party. The high standing of the delegation and its valuable presentation reflected Senegal's well-known active role in the protection and promotion of human rights. The country's third periodic report provided a great deal of information on legislation that had been enacted, although it could have said more about how the provisions of the Covenant were given effect in everyday life. Additional information would be appreciated on how the general public and the legal profession were made aware of the rights and remedies provided for under the Covenant and the Optional Protocol.

32. Concerning the reaffirmation, in article 79 of the Constitution, of the primacy of international obligations over national legislation (para. 5 of the report), he noted that the representative of the State party had replied to the question whether individuals could invoke the provisions of the Covenant before the courts. However, in that regard, it might be useful if the delegation could cite actual court decisions or sentences.

33. He would also welcome clarification regarding whether the provisions on non-discrimination contained in articles 2 and 26 of the Covenant were being fully applied, particularly in view of the claims of some humanitarian organizations - described as groundless in paragraph 15 of the report - that the unrest in southern Senegal was the result of racial or ethnic discrimination and that the people of the region were ignored by the public authorities, which were interested only in the economic and social development of the north, west and centre of the country. The issue should perhaps also be considered in the light of the self-determination provisions of article 1 of the Covenant. It would, of course, be remembered that prior to independence the southern part of the country had already posed problems for the colonial authorities. Lastly, the Constitution itself, in its prohibition of the formation of political parties based on religious, ethnic or other such grounds, effectively recognized the problem of ethnicity.

34. Mr. Aguilar Urbina took the Chair.

35. Mrs. HIGGINS said that she wished to extend the warmest welcome to the delegation of Senegal and to commend the State party on the prompt submission and quality of its report, which largely followed the Committee's guidelines. She did, however, share Mr. El Shafei's view that, while formally excellent, the report was somewhat lacking in substance with regard to what was actually happening in the country and provided little cross-referencing between legal provisions and practical problems.

36. From paragraph 27 of the report, she noted that states of emergency had been proclaimed on more than one occasion in the recent past, yet no notification appeared to have been given by the State party to the effect that

it had availed itself of the right of derogation provided for in article 4 (3) of the Covenant. To be sure, some oral information had been provided to the Human Rights Committee on the 1988 emergency, and it was also gratifying to note that a large number of police reports concerning that period had been invalidated by the courts (para. 23 of the report). All the same, if the application of provisions of the Covenant had been suspended, it was puzzling that no communication on the matter had been received.

37. One other, more general question she wished to raise was prompted by the statement in paragraph 33 of the report that amnesty was a feature of the Senegalese legal system. Did amnesty mean permitting persons convicted of offences to be released or did it imply that complaints might not be pursued against public servants accused of certain acts?

38. Mr. Pocar resumed the Chair.

39. Mr. MÜLLERSON welcomed the third periodic report, which had been prepared in accordance with the Committee's guidelines, and commended the efforts of the State party in the field of the protection and promotion of human rights. The commitment of Senegalese public institutions to the fundamental principle of protecting human rights was referred to specifically in paragraph 23 of the report, which stated that failure by the forces of law and order to respect the legal provisions concerning states of emergency was construed as a serious breach of procedure. In that connection, he wished to know what penalties could be imposed on those found guilty of procedural violations and what measures were provided to remedy the wrongs committed by public officials.

40. Regarding states of emergency and siege, like Mrs. Higgins he wondered why no information had been submitted, through the intermediary of the Secretary-General of the United Nations, on any derogations under article 4 (3) of the Covenant. He was also puzzled by the reference in paragraph 27 of the report to article 53 of the Constitution, which in the version he had consulted did not deal with emergency matters at all. Article 47 of the Constitution, however, did contain very extensive emergency provisions which in his view were much broader than those envisaged by article 4 of the Covenant. On a related matter, he wondered what was meant by the term "requisitioning of persons" in paragraph 29 of the report.

41. In the context of article 27 of the Covenant, paragraphs 92 and 104 of the report stated that there were no problems regarding the rights of minorities in Senegal. Paragraph 105 indicated that there were several social groups which spoke different languages, although there was "no such thing as the domination of one language over the other". Yet as he understood the definition of a minority, it was not merely a group dominated by another group, but rather a group that felt different from other members of the population - on ethnic or religious grounds, for example. There was no country in the world that did not have minorities. He would like to know how the Government of Senegal characterized the groups referred to in paragraph 105, if not as minorities.

42. Mr. SADI said that Senegal was a major force for the promotion and protection of human rights in Africa and throughout the world. He welcomed the

delegation's oral introduction of the report, which was informative and useful, even though it did not necessarily meet all the Committee's expectations.

43. He would like to hear examples of the primacy of the Covenant over national legislation, as mentioned in paragraph 5.

44. Paragraphs 12 and 16 of the report indicated that there was no discrimination on the basis of origin, race, religion or sex. Had the other criteria mentioned in article 2 of the Covenant - language, property, political or other opinion, etc. - been intentionally omitted?

45. The report gave examples of how discrimination between the sexes had been eliminated in the legislation, but said nothing about affirmative action to increase the role of women in public and private functions. It was not enough to adopt laws against discrimination: it was also necessary to translate legal concepts into realities. It would be useful to know, for example, how many women members there were in the country's legislative bodies and decision-making organs and how many women were heads of private companies.

46. Paragraph 9 outlined Senegal's position on the right to self-determination in terms of support for the efforts of peoples to achieve independence. He would like to know, however, how Senegal regarded expressions of self-determination on the domestic front - periodic, democratic elections, for example - once a people had achieved independence.

47. Miss CHANET welcomed the presence of a high-level delegation from Senegal, attesting to the country's interest in pursuing its cooperation with the Committee.

48. She would appreciate further information on the role of the Mediator of the Republic, an institution established only recently. Had there been any experience yet with its workings?

49. She would also welcome additional information on states of emergency: did the non-derogable rights mentioned in article 4 (2) of the Covenant remain unrestricted under such circumstances? What rights, specifically, were suspended? The advisory control commission mentioned in paragraph 28 of the report seemed at first glance to be a good initiative. However, she would welcome more information on that body, including its composition and its specific role.

50. Article 47 of the Senegalese Constitution had been modelled on article 16 of the French Constitution. Because of the broad powers vested in the President under that article, the French Government had made a reservation with regard to article 4 of the Covenant. However, the Senegalese Government had not made a similar reservation, and she would therefore like to know its views on the compatibility with article 4 of the Covenant of the presidential powers conferred by article 47 of the Constitution.

51. Paragraph 20 of the report described measures to deal with disruption of "the peace" by "a mob or assembly of armed or unarmed individuals". She would

be interested to know how "unarmed individuals" could threaten "the peace", and how "the peace" ("la tranquillité publique") differed from public order ("l'ordre public").

52. She associated herself with Mr. Müllerson's question about the treatment of minorities. Paragraph 106 of the report seemed to imply that the existence of a repressive body of laws was sufficient to protect minorities, when in fact article 27 of the Covenant called for positive measures to ensure minority rights.

53. Finally, on the question of family rights, she noted that articles 152 and 153 of the Family Code envisaged an equitable and functional distribution of the tasks of partners in a marriage, but failed to provide for equality of rights between spouses, as required under article 23 (4) of the Covenant. Since the Government had already made such great strides in enhancing the status of women, could it not envisage taking a further step to ensure the more equitable sharing of rights and responsibilities between spouses?

54. Mr. WENNERGREN said that the third periodic report of Senegal usefully supplemented the second periodic report to give a comprehensive picture of the human rights situation in the country.

55. Like Miss Chanet, he wished to learn more about the role of the Mediator of the Republic. He inquired how large a staff the Mediator had and in what fields staff specialized - legal affairs, investigative techniques, etc. Would the Mediator, like ombudsmen in other countries, deal primarily with complaints from members of the National Assembly rather than with those of private individuals?

56. In the introductory statement, the Senegalese representative had mentioned the establishment of a Constitutional Council. Article 82 of the Constitution indicated that the Supreme Court would decide the constitutionality of laws. He would therefore appreciate clarification as to how the work of the Constitutional Council and the Supreme Court would be coordinated, and what role the Constitutional Council would play in general.

57. In the light of article 81 of the Constitution ("The judicial power shall be the guardian of the rights and freedoms defined by the Constitution and the law"), he wished to know how the system of judicial review was organized. When a citizen deemed his rights to have been violated, how could he ensure that the problem was brought up for judicial review?

58. Mr. PRADO VALLEJO noted that the Government of Senegal had always cooperated fully with the Committee. The third periodic report gave comprehensive information about legislation but left questions unanswered about actual practice regarding observance of human rights under the Covenant. Nevertheless, it was noteworthy for its candid references to criticism of Senegal by humanitarian organizations, a frankness that was not always discernible in State party reports.

59. He would like more information about the specific rights subjected to limitations during states of emergency. Were effective remedies available to citizens who considered their fundamental rights to have been violated? Did the remedy of habeas corpus apply during states of emergency? He would also appreciate further information on the functioning and powers of the advisory control commission mentioned in paragraph 28 of the report.

60. The statement in paragraph 29 that requisitioning could apply to services and individuals required to meet the needs of the country should be elucidated. What regime covered the institution of requisitioning?

61. Noting that amnesties had frequently been proclaimed in Senegal, he inquired what their scope was. If they tended to interfere with the investigation of human rights violations - for example, of cases of police torture and abuse - they would militate against the fulfilment of the Covenant's provisions.

62. Finally, paragraph 34 of the report implied that minors could incur the death penalty. If true, that was a violation of the provisions of article 6 of the Covenant.

63. Mr. ANDO welcomed the delegation of Senegal, a country which was one of the leading promoters of human rights. While the report submitted by the Government of Senegal was good in general, more detailed information would be appreciated on a number of points.

64. He associated himself with the concern expressed by Mr. Lallah regarding the family prerogatives of the husband vis-à-vis the wife. Had Senegal ratified the Convention on the Elimination of all Forms of Discrimination against Women and, if not, was it planning to do so?

65. With regard to discrimination in general, he noted that article 3 of the Constitution of Senegal prohibited discrimination on certain grounds. He would like to know whether women could assert their rights in the context, for example, of political parties.

66. Under article 27 of the Covenant, the rights of minorities with regard to culture, religion and language could not be denied. However, neither the second nor the third periodic report of Senegal contained comprehensive information on the manner in which Senegal was implementing the provisions of that article. In that regard, reference had been made in the Committee to events in southern Senegal (Casamance) and he would welcome information on the long-term policy being pursued by Senegal to resolve the situation.

67. Referring to paragraph 87 of the report, he asked the delegation for information concerning the grounds for deprivation of Senegalese nationality.

68. Mr. HERNDL remarked that the Committee had always appreciated the cooperation shown by the Government of Senegal.

69. He wished to say, first of all, that any national law must be consistent with treaties and conventions ratified by the Government. In that connection, he was pleased to see that the primacy of international obligations was emphasized in paragraph 5 of the report. His question concerned the problem of who could determine the unconstitutionality of a law. In that regard, he noted that articles 63 and 82 of the Constitution of Senegal stated that the Supreme Court could declare a law unconstitutional. He therefore assumed that it was within the power of the Supreme Court to declare unconstitutional a law that would be inconsistent with the Covenant. However, there remained the question of how the Supreme Court could be seized of the matter and what procedure was followed because in principle the Court could only declare a law unconstitutional at the request of the President of the Republic or of at least one tenth of the members of the National Assembly. He asked whether an individual could in the last resort raise the question with the Supreme Court and whether the Court could then make a decision on the compatibility of the national law with the Covenant.

70. With regard to the application of article 27, the third periodic report contained an interesting summary of United Nations activities in the field of minorities. That summary offered the conclusion that the question of minorities had still not been fully settled in international law and that it could therefore be stated that the problem of minorities, as currently defined, did not exist in Senegal.

71. During the Committee's consideration of the second periodic report of Senegal, some members had inquired whether any difficulties had been experienced in the effective enjoyment by minorities of their rights under article 27 of the Covenant and why, in the absence of religious or ethnic conflict in Senegal, it had been necessary in article 3 of the Constitution to prohibit political groupings based on ethnic or religious affiliation. The report stated clearly that there were in Senegal several linguistic groups, which should come under the provisions of article 27 of the Covenant from the standpoint of their culture and language. He requested additional information on that issue and expressed concern at the statements in paragraphs 15 and 104 of the report relating to unrest in southern Senegal.

72. Mr. FOFANA (Senegal) thanked the members for their expressions of appreciation concerning his country.

73. He wished, first of all, to reply to the questions raised concerning polygamy. It was an institution which existed in Senegal and would always exist. It was a sociological reality that had created problems during the colonial era. Since the French could only register one marriage under the European civil statutes, the colonizers had devised an indigenous system under which up to three or four marriages could be registered. They had therefore been obliged to adopt their legislation to that sociological reality. When the question of preparing a Family Code had arisen, the initial tendency had been to suppress polygamy. Following the presentation of the draft Family Code in the National Assembly, realistic legislators had recognized that the Senegalese were by nature polygamous and that it would be Utopian to adopt a law abolishing polygamy in Senegal. The adoption of such a law would give rise to the reaction

that had taken place in countries like Tunisia, Côte d'Ivoire and Guinea, where the legislatures had created a situation where men had had as many as 50 wives. Senegal had therefore included options in the Family Code which permitted polygamy but limited the number of wives to three. It should be noted, however, that the legislature imposed on a polygamous husband the obligation to treat his wives equally. In Senegal, a woman could complain to a judge if her husband violated his obligations.

74. With regard to the question relating to the declaration of states of emergency in 1988 and 1989, he said that the two events had not been related. In 1988, a state of emergency had been declared following events that had occurred after the elections and should be seen in that context. The state of emergency declared in 1989 had related to events between Senegal and Mauritania and had concerned solely the Dakar region. Like the state of emergency declared in 1988, it had merely imposed a curfew and people had been free to move about during the daytime.

75. With regard to the question whether the provisions of the Covenant could be invoked before Senegalese courts, he said that article 79 of the Constitution provided for the primacy of international obligations over national legislation. In that connection, he recalled that two years previously, the Indictment Division had released certain individuals who had argued that their detention was contrary to the Covenant.

76. There was no problem with regard to the question of minorities in Senegal, particularly in view of the Covenant's definition of that term. People in the south were not regarded as members of minorities and were involved in all levels of public affairs.

The meeting rose at 1 p.m.